



Control Number: 51830



Item Number: 7

Addendum StartPage: 0

PROJECT NO. 51830

**REVIEW OF CERTAIN RETAIL
ELECTRIC CUSTOMER
PROTECTION RULES**

§
§
§

**PUBLIC UTILITY COMMISSION
OF TEXAS**

2021 JUL -6 PM 2:16

**OFFICE OF PUBLIC UTILITY COUNSEL'S COMMENTS
ON COMMISSION STAFF'S STRAWMAN RULE**

The Office of Public Utility Counsel ("OPUC") respectfully submits these comments on the Strawman Rule proposed by the Staff of the Public Utility Commission of Texas ("Commission Staff"). Commission Staff's Strawman Rule implements House Bill 16, relating to the regulation of certain retail electric products, and section 9 of Senate Bill 3, relating to preparing for, preventing, and responding to weather emergencies and power outages, increasing the amount of administrative and civil penalties, as adopted by the 87th Texas Legislature. Commission Staff's Strawman Rule proposes to amend 16 Texas Administrative Code ("TAC") §§ 25.471 and 25.475.

OPUC's comments make the following recommendations to the Strawman Rule:

- Revise 16 TAC § 25.43 as part of this proceeding;
- Change the Provider of Last Resort ("POLR") rate for residential and small commercial customers from an index to the Electric Reliability Council of Texas ("ERCOT") Real-Time Settlement Point Prices ("RTSPP") to a flat-rate, affordable plan without fluctuating energy or ancillary service components; and
- Require "Your Rights as a Customer" document to be written in plain, understandable language that residential and small commercial customers can understand.

**I. COMMENTS ON POLR AND RESPONSES TO COMMISSION STAFF'S
QUESTIONS**

Commission Staff requested comment on the following questions:

1. *If the Commission removes the RTSPP from the POLR rate formulas, what would be an equitable approach to POLR pricing moving forward?*

Currently, 16 TAC § 25.43 links portions of the POLR rate for residential and small commercial customers to RTSPP. House Bill 16 prohibits an aggregator, broker, or a retail electric provider (“REP”) from offering a retail electric product in which the price a customer pays for electricity includes a direct pass-through of RTSPP determined by ERCOT. Therefore, OPUC believes the POLR rule needs to be revised in this proceeding to remove RTSPP from the POLR rate for residential and small commercial customers.

OPUC strongly believes that the POLR rate should be a flat rate for residential customers (price per kilowatt-hours (“kWh”)) and a flat rate energy charge with Transmission and Distribution Service Provider (“TDSP”) charges passed through for small commercial customers. OPUC believes the POLR should also be an affordable rate plan, with no surprises, that consumers can switch away from without penalty. When a customer’s REP goes out of business suddenly, customers may not be prepared to immediately select another REP. If customers are subsequently placed on a high-rate plan or a plan that can fluctuate with ERCOT energy or ancillary service prices, it can result in a very high bill for the customer. It may also cause additional and unnecessary customer confusion. Therefore, for residential customers, OPUC recommends the POLR rate be a flat-rate, affordable plan and recommends removing the index to the RTSPP.

2. What other considerations should the Commission take into account when determining whether and how to remove RTSPP from the POLR rate formulas (e.g. the role the POLR plays in § 25.498, related to prepaid service, etc.)?

PURA § 39.107(g) states, “Metered electric service sold to residential customers on a prepaid basis may not be sold at a price that is higher than the price charged by the provider of last resort.” 16 TAC § 25.498(c)(15) states, “A REP that provides prepaid service to a residential customer shall not charge an amount for electric service that is higher than the price charged by the POLR in the applicable TDU service territory.” 16 TAC § 25.498(c)(15) also delineates tests that can be used to determine whether the prepay rate is below the POLR rate. Historically, it has been difficult for REPs and others to determine or prove whether the price being charged to the customer for prepay service is indeed lower than the POLR rate. If the POLR rate were a flat amount, there would be much less confusion for prepay electricity providers, customers, and the public. It would also be easier for the Commission to determine whether there was a violation of the statute or rule if the price did not have fluctuating components.

II. COMMENTS ON REVISIONS TO 16 TAC § 25.471

OPUC supports the proposed notice timelines provided for the expiration of a fixed rate product.¹ OPUC believes that adequate notice is vital for the protection of ratepayers, especially those dependent on lower or fixed incomes.

OPUC recommends the addition of a plain language requirement to 16 TAC § 25.471 (h), the “Your Rights as a Customer” disclosure.² OPUC recognizes the natural complexities that accompany the electric utility industry, and that is why OPUC believes it is vital to ensure that all notice communications with ratepayers be in plain language, especially “Your Rights as a Customer,” which includes a summary of standard customer protections.³ OPUC recommends the following addition to subsection (h):

(h) **Your Rights as a Customer disclosure.** The information set out in this section must ~~shall~~ be included in a REP's "Your Rights as a Customer" document in plain language, to summarize the standard customer protections provided by this subchapter or additional protections provided by the REP in a manner that is understandable to the average residential or small commercial customer.

III. CONCLUSION

OPUC appreciates the opportunity to provide these comments on the Strawman Rule and looks forward to working with Commission Staff and other stakeholders in this project.

¹ Strawman at 11; newly proposed 16 TAC § 25.471 (e)(2).

² Strawman at 23; 16 TAC § 25.471 (h).

³ *Id*

Date: July 6, 2021

Respectfully submitted,

Chris Ekoh
Interim Public Counsel
State Bar No. 06507015

Shawnee Claiborn-Pinto

Shawnee Claiborn-Pinto
Director of Market & Regulatory Policy
Zachary Stephenson
Assistant Public Counsel
State Bar No. 24073402

OFFICE OF PUBLIC UTILITY COUNSEL
1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 78711-2397
(512) 936-7500 (Telephone)
(512) 936-7525 (Facsimile)
shawnee.claiborn-pinto@opuc.texas.gov
zachary.stephenson@opuc.texas.gov
opuc_eservice@opuc.texas.gov (Service)